

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

STEPHEN WESTLEY HATFIELD,

Petitioner,

v.

Docket No. 3: 09-0119

LARRY PARSONS, Administrator of the
Western Regional Jail,

Respondent.

STIPULATION AND ORDER

Currently pending before the Court is the Motion for Summary Judgment filed by Respondent Larry Parsons. Counsel for Petitioner Stephen Westley Hatfield recently discovered that the hospital, medical, and psychological records, which were made a part of the record in the underlying state habeas corpus action, were not included in the record before the West Virginia Supreme Court when it decided *Hatfield v. Painter*, 222 W.Va. 622, 671 S.E.2d 453 (2008). According to Petitioner's counsel, these records, which should have been included because the designation of the record for the appeal asked that all records in the underlying habeas corpus case be included, had not been made a part of the state court record in either *State v. Hatfield*, 186 W.Va. 507, 413 S.E.2d 162 (1991), or in *State v. Hatfield*, 206 W.Va. 125, 522 S.E.2d 416 (1999).

In an effort to address this omission in the record, Petitioner plans to file a petition for rehearing, out of time, with the West Virginia Supreme Court, to permit that Court to rehear the appeal of his state habeas corpus action, in light of the full record, and to exhaust all of his rights in state court.

Rather than filing additional enlargements of time for Petitioner to respond to the pending motion for summary judgment, Petitioner and Respondent have agreed to stay all further proceedings

in this pending federal habeas corpus action to allow Petitioner the opportunity to file a petition for rehearing, out of time, with the West Virginia Supreme Court, and to allow the West Virginia Supreme Court to resolve that petition. Once there has been a final resolution of Petitioner's rehearing petition, counsel for Petitioner is ordered to notify this Court of the final action taken by the West Virginia Supreme Court.

Based upon this stipulation, all further actions in this federal habeas corpus action are stayed pending the final action by the West Virginia Supreme Court.

IT IS SO ORDERED this 29th day of May, 2009.


MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE

Approved by:

~~/s/ Lonnie C. Simmons~~ _____
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